

Promulgating Rules Governing Expedited Hearings

16 VAC 30-50-30. Rule 2. Hearing Procedures.

At the request of either party, or at the commission's direction, contested issues not resolved informally through prehearing procedures will be referred for decision on the record or evidentiary hearing.

2.1 Decision on the record. [section unchanged]

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2.2 Evidentiary hearing. [section unchanged]

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2.3 Expedited Hearing. – A. Scope. – An employee may request an expedited hearing before the Commission when the employer has submitted an Application for Hearing pursuant to Rule 1.4 and probable cause has been found to suspend benefits pending a hearing on the matter. An employee may also seek expedited determination of any disputed claim arising after the initial compensability of the accident has been determined by the Commission.

B. Written Request. – An employee seeking an expedited hearing must file a written request with the Clerk's office, and a copy of the request shall be sent to the employer. The request must include, by way of description, attachment or enclosure, evidence sufficient to find that, without an expedited proceeding to determine the merits of the dispute, the employee will be caused to suffer severe economic hardship. What constitutes severe economic hardship will be determined by the Commission on a case-by-case basis. A copy of the employee's request will be sent to the employer, insurer or

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counsel of record upon receipt, along with a Notice of Request For Expedited Hearing, by registered or certified mail.

C. Loss of Income. – When the employee alleges that he/she is not receiving compensation benefits, and is unemployed, unable to work, or only partially employed because of an injury compensable under the Act, the employee must establish that failure to grant an expedited hearing will result in severe, immediate economic hardship. In this regard, the Commission will consider, but is not limited in considering the following evidence:

1. Whether, and to what extent, the employee is presently employed, and what other sources of income are available to support the employee;
2. Whether the employee has dependents for whom the employee's wages or salary was their sole or primary source of financial support;
3. Whether the employee has received notices of imminent or threatened foreclosure or eviction actions, or the employee is in a state of homelessness;
4. Whether the employee has received notices of imminent repossession of personal vehicles necessary for employment or medical treatment visits; and
5. Any other evidence demonstrating that the employee's immediate ability to provide food, clothing and shelter will be threatened by failure to grant an expedited hearing.

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D. Medical Expenses. – When the employee seeks an expedited hearing, asserting that authorization of, or payment for recommended medical treatment has been denied by the employer or insurer, the employee must establish that failure to grant an expedited hearing will result in severe economic hardship. In this regard, the Commission will consider, but is not limited in considering the following evidence:

1. The general nature of the employee's injuries;
2. Whether, if authorization is being sought for recommended treatment not already obtained, the employee's physician has stated that the procedure must be performed on an emergent basis, and failure to do so will threaten the employee's life or result in immediate and severe deterioration of the employee's physical or mental condition;
3. Whether, if payment or reimbursement for medical expenses already incurred is being sought, necessary ongoing medical treatment will be withheld for failure to pay for prior medical treatment, and that the withholding of such treatment will threaten the employee's life or result in immediate and severe deterioration of the employee's physical or mental condition;
4. The cost of the medical treatment in dispute, and the employee's ability to pay for it; and
5. Any other evidence demonstrating that failure to grant an expedited hearing on this issue will result in severe economic hardship.

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E. Employer Response. – Upon receipt of the Commission's Notice of Request for Expedited Hearing, the employer shall have fourteen (14) days to investigate the basis for the employee's expedited hearing request. Prior to, or at the expiration of the fourteenth day, the employer shall file with the Commission, by hand-delivery or certified mail, a written statement indicating whether the employer will or will not agree to the employee's request for expedited hearing. If the employer will not agree to proceed on an expedited basis, it must state, with specificity, the basis for its inability to proceed pursuant to an expedited hearing schedule. Filing shall be effective upon receipt by the Commission, or by placing the statement in certified mail.

F. Informal Conference – Once the Commission has received the employer's response statement, or fourteen (14) days pass without a filed response from the employer, the Commission shall make all reasonable efforts to schedule expeditiously an informal conference with the parties, whether in person, by teleconference or by other electronic transmission. With regard to expedited claims for payment of medical expenses pursuant to Rule 2.2 (D), no informal conference will be scheduled until the employee submits medical evidence to the employer and the Commission supporting both the underlying claim and the necessity of expedited proceedings. During the informal conference, the Commission will discuss issues relevant to the grant or denial of an expedited hearing including, but not limited to, discovery between the parties, the timing and scheduling of depositions and the parties' ability to secure other relevant evidence in an expedited manner. The Commission will discuss the issues raised by the

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claim, and try to limit the scope of any matter ultimately referred to the expedited hearing docket by facilitating agreements between the parties.

G. Grant or Denial of Expedited Hearing. – During the informal conference, or within seven (7) days of its completion, the Commission will determine whether the claim underlying the request for expedited hearing is appropriate for the expedited hearing docket. If the request for an expedited hearing is granted, the Commission will advise the parties of this decision during the informal conference, or in writing within seven (7) days, by registered or certified mail. If the Commission determines that the matter is not appropriate for the expedited docket, the parties will be advised of the Commission's determination, and the matter will be referred to the claims department for regular processing.

H. Scheduling and Continuances. – The Commission will confer with the parties about scheduling a hearing date at the informal conference, or by teleconference after an expedited hearing has been granted in writing. The matter will be set for a hearing no less than ten (10) days, and no more than twenty-eight (28) days after the expedited hearing was granted. Once the matter is set down for an expedited hearing, the employee will not ordinarily be granted a continuance. A continuance will only be granted to the employee for good cause shown, involving exceptional circumstances beyond the control of the employee, or the employee's attorney. Any claim pending on the expedited docket that is continued or non-suited at the insistence of the employee will be returned to the regular docket, and shall not be reinstated for expedited proceedings.

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I. Closing the Record. – The record shall close at the end of the expedited hearing unless, for good cause shown, one or both parties are unable to present necessary medical or factual evidence. The parties must make a good-faith effort to expedite completion of the record within the time limits imposed by the Commission.

J. Decision. – The Deputy Commissioner hearing the case will issue an opinion within fourteen (14) days after the record closes in an expedited hearing proceeding. The opinion shall be sent to the parties by registered or certified mail.

K. Expedited Review. – Either party may seek an expedited Review of the decision to grant or deny an expedited hearing. Parties seeking expedited Review must file a written request within seven (7) days of receipt of the decision to grant or deny an expedited hearing. The written request must include a statement explaining the grounds for review, and must enclose all information the party believes is necessary for consideration of the request. A copy of the Request for Expedited Review shall be furnished to the opposing party. The Commission shall provide Notice of the request for expedited review within three (3) days of its receipt. The opposing party shall have seven (7) days from receipt of the Commission's Notice to file a written statement addressing the merits of the review request, and enclosing all information it believes is necessary for consideration on review. The Commission shall review the decision to grant or deny an expedited hearing, and will issue a decision by Order within seven (7) days.

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L. Review After Expedited Hearing. – Review of a Deputy Commissioner's decision following an expedited hearing shall proceed according to the provisions of Rule 3.1 and § 65.2-705 of the Code of Virginia.